

The discreet ramping up of environmental criminal law

The IPCC Sixth Assessment Report issued earlier this year stated that “*climate change has caused substantial damages, and increasingly irreversible losses, in terrestrial, freshwater, cryospheric, and coastal and open ocean ecosystems*” and that the impacts of climate change will increase as global warming continues, environmental protection and compliance with environmental measures are becoming increasingly important. In France, environmental criminal law, although not new, is only beginning to be effectively applied. This is recently reflected on the one hand, by the enactment of a criminal policy in this area, and, on the other hand, by the increasing number of sanctions imposed for breaches of the rules in this field.

1. The Minister of Justice has reaffirmed his determination to further strengthen the repression of environmental offences

On 9 October 2023, the Ministry of Justice issued a circular (i.e., a paper to explain or present new measures or policies) on criminal policy in the field of environmental criminal justice. The purpose of this circular was to specify the means implemented to enable the development of environmental criminal litigation within the jurisdictions and to update the criminal policy guidelines. This text aims at strengthening the coordination of administrative and judicial actions through the deployment of operational committees to combat environmental delinquency, reinforce the effectiveness of judicial investigations into environmental offences, and implement a strong and appropriate criminal response in environmental matters. The abovementioned departmental committees, chaired by prosecutors, have been set up to encourage relations between magistrates and all the services involved in detecting and dealing with high-impact phenomena considering local particularities and the environmental damage most frequently encountered in the area in question. To allow effective investigation, the circular invites, when appropriate, prosecutors to ensure that investigators work in conjunction with agents from specialized administrations, given their environmental expertise and to mobilize special investigative techniques (surveillance, infiltration, sound recording, interception of correspondence, data capture). Last, to ensure a criminal response, the aim is to increase the use of CJIPs (i.e., criminal settlements comparable to American deferred prosecution agreements), which allows for restoration, compliance and, with a view to recovery, significant fines.



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2. Jurisdictions are intensifying the enforcement of environmental criminal laws

In addition to the texts, which serve as a reminder of the authorities' determination to punish environmental offences, sanctions are also enforced. By way of example, in November 2019, three NGOs filed a complaint against a company for importing Ipé wood from Brazil to the European market, without carrying out the minimum checks required by the European regulation No 995/2010 to prevent the import of illegal wood. Despite the unsuccessful controls carried out by the police and the audits carried out by private bodies, on 6 September 2023 the Châteauroux Criminal Court assessed the company's negligence in the light of several criteria (complexity of the chain, corrupt practices, suppliers already implicated, etc.) and imposed a 20,000 euros fine on the Company as well as 20,000 euros in damages for the moral prejudice suffered by the three NGOs.

On 11 September 2023, the Rennes Criminal Court issued a similar ruling regarding deforestation. It is now likely and fortunate that decisions in this field will be taken on a regular basis, marking the end of a period when the environment was the poor relation of criminal law.





Practice Area News

Violation of AML obligations amounts to... unfair competition. On 27 September 2023, the commercial division of the French Supreme Court (*Cour de cassation*) issued a significant ruling holding that a violation of Anti-Money Laundering obligations can be qualified as unfair competition. This decision could be affecting the wider financial industry due to its connection with Article L. 561-1 of the French Financial and Monetary Code.

The dispute at stake in this case involved two banking service providers (prepaid cards). The main issue was the defendant's refusal to disclose intermediate financial statements, a request made by the claimant to assess damages stemming from alleged unfair competition. The defendant argued that unfair competition was not a valid claim in this context.

The Cour de cassation's ruling is groundbreaking as it links AML compliance with unfair competition. The Court's reasoning hinges on the concept that companies inevitably incur specific expenses to meet AML obligations imposed by the French Financial and Monetary Code. For this reason, the Court establishes a connection between AML breached and unfair competition, as non-compliant companies may gain a competitive advantage by avoiding such expenses.

A practical guide on the internal anti-corruption investigations issued from the AFA and the PNF. In March 2023, the French Anti-corruption Agency (AFA) and the French Financial Prosecutor (PNF) came together to create a practical guide for companies on how to conduct internal anti-corruption investigations.

While this guide offers helpful advice, it is not binding *per se*. However, it is essential to pay close attention to it because internal investigations are crucial for demonstrating cooperation and reducing penalties in CJIP (criminal settlement, comparable to American deferred prosecution agreements).

Among other recommendations, the AFA and PNF strongly advise that companies establish clear procedures for internal investigations before starting one.

In the Firm

• **Navacelle is delighted to announce the association of Roxane Castro.**

Roxane Castro joined the firm as Counsel in September 2022 and became a partner in 2023. Member of the Paris and New York bars for over 10 years, Roxane assists the firm's clients on litigation and compliance issues, tailoring the strategy to take into account international issues and specificities of each activity.

• **Navacelle teams up with the Paris Bar School to provide a training course on practical training sessions on how to conduct an internal investigation.**

Navacelle, in partnership with the Paris Bar School, is hosting ten practical training sessions for lawyers wishing to improve their internal investigations practice. With contributions from legal, ethics and compliance directors, forensic experts and investigating lawyers, participants have the opportunity to take a close look at all the stages involved in conducting an internal investigation by sharing best practices.



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